

Assembly Bill No. 1084

CHAPTER 882

An act to amend Sections 14836, 14837, 14838.5, 14839, 14839.1, 14840, 14842, and 14842.5 of, and to repeal and add Section 14838 of, the Government Code, and to amend Sections 2000 and 2001 of, and to add Sections 2002 and 10116 to, the Public Contract Code, relating to public contracts.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1084, Wesson. Public contracts.

(1) Existing law requires state agencies to give small businesses a 5% preference in contracts for construction, the procurement of goods, or the delivery of services.

This bill would include microbusinesses under those provisions, and revise annual goals for the program. The bill would also add related definitions and make related changes.

This bill would also authorize a local agency to provide for a small business preference in construction, the procurement of goods, or the delivery of services, and to establish a subcontracting participation goal for small businesses on contracts with a preference for those bidders who meet the goal.

This bill would require an awarding department to report to the Governor and the Legislature on the level of participation by business enterprises, by race, ethnicity, and gender of owner, in specified contracts.

(2) The bill would state legislative intent to enact legislation participation of small businesses in public contracting. The bill would also state the intent of the Legislature to act in conformity with certain public contracting recommendations.

The people of the State of California do enact as follows:

SECTION 1. Section 14836 of the Government Code is amended to read:

14836. (a) The Legislature hereby declares that it serves a public purpose, and it is of benefit to the state, to promote and facilitate the fullest possible participation by all citizens in the affairs of the State of California in every possible way. It is also essential that opportunity in Ch. 882 provided for full participation in our free enterprise system by small business enterprises. (b) Further, it is the declared policy of the Legislature that the state should aid, counsel, assist, and protect, to the maximum extent possible, the interests of small business concerns, including microbusinesses, in order to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the state be placed with these enterprises.

SEC. 2. Section 14837 of the Government Code is amended to read:

14837. As used in this chapter:

- (a) “Department” means the Department of General Services.
- (b) “Director” means the Director of General Services.
- (c) “Manufacturer” means a business that is both of the following:
 - (1) Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.
 - (2) Classified between Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.
- (d) (1) “Small business” means an independently owned and operated business, which is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.
- (2) “Microbusiness” is a small business that, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars (\$2,500,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees.
- (3) The director shall conduct a biennial review of the average annual gross receipt levels specified in this subdivision and may adjust that level to reflect changes in the California Consumer Price Index for all items. To reflect unique variations or characteristics of different industries, the director may establish, to the extent necessary, either higher or lower qualifying standards than those specified in this subdivision, or alternative standards based on other applicable criteria.
- (4) Standards applied under this subdivision shall be established by regulation, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and shall preclude the qualification of businesses that are dominant in their industry.

SEC. 3. Section 14838 of the Government Code is repealed.

SEC. 3.1. Section 14838 is added to the Government Code, to read:

14838. In order to facilitate the participation of small business, including microbusiness, in the provision of goods, information technology, and services to the state, and in the construction (including alteration, demolition, repair, or improvement) of state facilities, the directors of General Services and other state agencies that enter those contracts, each within their respective areas of responsibility, shall do all of the following:

- (a) Establish goals, consistent with those established by the Office of Small Business Certification and Resources, for the extent of participation of small businesses, including microbusinesses, in the provision of goods, information technology, and services to the state, and in the construction of state facilities.
- (b) Provide for small business preference, or nonsmall business preference for bidders that provide for small business and microbusiness subcontractor participation, in the award of contracts for goods, information technology, services, and construction, as follows: (1) In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness shall be 5 percent of the lowest responsible bidder meeting specifications. The preference to nonsmall business

bidders that provide for small business or microbusiness subcontractor participation shall be, up to a maximum of 5 percent of the lowest responsible bidder meeting specifications, determined according to rules and regulations established by the Department of General Services. (2) In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or microbusiness shall be 5 percent of the highest responsible bidder's total score. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation shall be up to a maximum 5 percent of the highest responsible bidder's total score, determined according to rules and regulations established by the Department of General Services. (3) The preferences under paragraphs (1) and (2) may not be awarded to a noncompliant bidder and may not be used to achieve any applicable minimum requirements. (4) The preference under paragraph (1) may not exceed fifty thousand dollars (\$50,000) for any bid, and the combined cost of preferences granted pursuant to paragraph (1) and any other provision of law may not exceed one hundred thousand dollars (\$100,000). In bids in which the state has reserved the right to make multiple awards, this fifty thousand dollar (\$50,000) maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses, including microbusiness, in the contract award.

(c) Give special consideration to small businesses and microbusinesses by both: (1) Reducing the experience required. (2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses and microbusinesses in the preparation and submission of the information requested in Section 14310.

(e) Under the authorization granted in Section 10163 of the Public Contract Code, make awards, whenever feasible, to small business and microbusiness bidders for each project bid upon within their prequalification rating. This may be accomplished by dividing major projects into subprojects so as to allow a small business or microbusiness contractor to qualify to bid on these subprojects.

(f) Small business and microbusiness bidders qualified in accordance with the provisions of this chapter shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible under this provision or any other provision of law shall not result in the denial of the award to a small business or microbusiness bidder. In the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small business or microbusiness, and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business or microbusiness, the contract shall be awarded to the disabled veteran-owned small business or microbusiness. This provision applies if the small business or microbusiness bidder is the lowest responsible bidder, as well as if the small business or microbusiness bidder is eligible for award as the result of application of the small business and microbusiness bidder preference granted by subdivision (b).

SEC. 4. Section 14838.5 of the Government Code is amended to read:

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars (\$5,000), but less

than two hundred thousand dollars (\$200,000) for construction contracts and less than one hundred thousand dollars (\$100,000) for all other contracts, to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains price quotations from two or more certified small businesses, including microbusinesses, or from disabled veterans business enterprises.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible certified small business, including a microbusiness, or from a disabled veteran business enterprise.

(c) If the estimated cost to the state is less than five thousand dollars (\$5,000) for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 5. Section 14839 of the Government Code is amended to read:

14839. There is hereby established within the department the Office of Small Business Certification and Resources. The duties of the office shall include:

(a) Compiling and maintaining a comprehensive bidders list of qualified small businesses, and noting which small businesses also qualify as microbusinesses.

(b) Coordinating with the Federal Small Business Administration, the Minority Business Development Agency, and the Office of Small Business Development of the Department of Economic and Business Development.

(c) Providing technical and managerial aids to small businesses and microbusinesses by conducting workshops on matters in connection with government procurement and contracting.

(d) Assisting small businesses and microbusinesses in complying with the procedures for bidding on state contracts.

(e) Working with appropriate state, federal, local, and private organizations and business enterprises in disseminating information on bidding procedures and opportunities available to small businesses and microbusinesses.

(f) Making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business and microbusiness participation.

(g) Develop, by regulation, other programs and practices that are reasonably necessary to aid and protect the interest of small businesses and microbusinesses in contracting with the state.

(h) The information furnished by each contractor requesting a small business or microbusiness preference shall be under penalty of perjury.

SEC. 6. Section 14839.1 of the Government Code is amended to read:

14839.1. The department shall have sole responsibility for certifying and determining the eligibility of small businesses and microbusinesses under this chapter.

SEC. 7. Section 14840 of the Government Code is amended to read:

14840. The department shall submit an annual report to the Legislature no later than January 1 of each year containing the following information:

- (a) Upon request, an up-to-date list of eligible small business bidders by general procurement and construction contract categories, noting company names and addresses and also noting which small businesses also qualify as microbusinesses.
- (b) By general procurement and construction contract categories, statistics comparing the small business and microbusiness contract participation dollars to the total state contract participation dollars.
- (c) By awarding department and general procurement and construction categories, statistics comparing the small business and microbusiness contract participation dollars to the total state contract participation dollars.
- (d) Any recommendations for changes in statutes or state policies to improve opportunities for small businesses and microbusinesses.
- (e) A statistical summary of small businesses and microbusinesses certified for state contracting by the number of employees at the business for each of the following categories: 0–25, 26–50, 51–75, and 76–100.
- (f) To the extent feasible, beginning in the year 2002, the number of contracts awarded by the department in the categories specified in subdivision (e).
- (g) The number of contracts and dollar amounts awarded annually pursuant to Section 14838.5 to small businesses, microbusinesses, and disabled veteran business enterprises.

SEC. 8. Section 14842 of the Government Code is amended to read:

14842. (a) A business that has obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for classification, and which by reason of that classification has been awarded a contract to which it would not otherwise have been entitled, shall do all of the following:

- 1) Pay to the state any difference between the contract amount and what the state's costs would have been if the contract had been properly awarded.
 - 2) In addition to the amount described in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.
 - 3) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.
- (b) All payments to the state pursuant to paragraph (1) of subdivision (a) shall be deposited in the fund out of which the contract involved was awarded.
- (c) All payments to the state pursuant to paragraph (2) of subdivision (a) shall be deposited in the state General Fund.
- (d) Prior to the imposition of any sanctions under subdivision (a), a business shall be entitled to a public hearing and to at least five working days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

SEC. 9. Section 14842.5 of the Government Code is amended to read:

14842.5. (a) It shall be unlawful for a person to do any of the following:

- 1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a small business or microbusiness enterprise for the purposes of this chapter.

2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a small business or microbusiness enterprise.

3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested certification as a small business or microbusiness enterprise.

4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this chapter.

(b) Any person who is found by the department to have violated any of the provisions of subdivision (a) is subject to a civil penalty of not more than five thousand dollars (\$5,000).

(c) If a contractor, subcontractor, supplier, subsidiary, or affiliate thereof, has been found by the department to have violated subdivision (a) and that violation occurred within three years of another violation of subdivision (a) found by the department, the department shall prohibit that contractor, subcontractor, supplier, subsidiary, or affiliate thereof, from entering into a state project or state contract and from further bidding to a state entity, and from being a subcontractor to a contractor for a state entity and from being a supplier to a state entity.

SEC. 10. Section 2002 is added to the Public Contract Code, to read:

2002. Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency may do any of the following in facilitating contract awards to small businesses:

(a) Provide for a small business preference in construction, the procurement of goods, or the delivery of services where responsibility and quality are equal. The preference to a small business shall be up to 5 percent of the lowest responsible bidder meeting specifications.

(b) Establish a subcontracting participation goal for small businesses on contracts and grant a preference, up to a maximum of 5 percent, to those bidders who meet the goal.

(c) Require bidders to make good faith efforts to meet a subcontracting participation goal for small business contracts. Bidders that fail to meet the goal shall demonstrate that they made good faith efforts to utilize small business contractors.

SEC. 11. Section 10116 is added to the Public Contract Code, to read:

10116. (a) On January 1, of each year, each awarding department shall report to the Governor and the Legislature on the level of participation of business enterprises, by race, ethnicity, and gender of owner, in contracts as identified in this article for the fiscal year beginning July 1 and ending June 30. In addition, the report shall contain the levels of participation of business enterprises, by race, ethnicity, and gender of owner, for the following categories of contracts:

1) Construction.

2) Purchases of materials, supplies, or equipment.

3) Professional services.

4) All contracts for a dollar amount of less than twenty-five thousand dollars (\$25,000).

(b) Awarding departments are prohibited from using the data compiled under this section to discriminate or provide a preference in the awarding of any contracts.

(c) Contractors are prohibited from using the information compiled under this section to discriminate or provide a preference in the solicitation or acceptance of bids for

subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin, or ancestry.

SEC. 12. It is the intent of the Legislature to enact legislation that will authorize local governmental entities to establish programs to increase the participation of small businesses in public contracting. In enacting that legislation, as well as in the other provisions of this act, it is the intent of the Legislature to act in conformity with the public contracting recommendations made by the Governor's Task Force on Diversity and Outreach in its report entitled, "Report to the Governor on Outreach Options" (August 1, 2000) and with existing Executive Orders.